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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

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No. 779
—

PAUL GINSBURG,

Petitioner,

vs.

RUSSELL H. ADAMS

—
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA
—

PAUL GINSBURG,

Pro se.

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**PETITION FOR WRIT OF CERTIORARI TO THE
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*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your petitioner, Paul Ginsburg, prays that a writ of certiorari be issued to review an order of the Supreme Court of Pennsylvania quashing the appeal of petitioner from the Court of Common Pleas of Allegheny County, Pennsylvania.

Opinions Below

The opinion to the Court of Common Pleas of Allegheny County, Pennsylvania (R. 46a-49a), is not officially reported.

The order of the Supreme Court of Pennsylvania quashing the appeal includes the stated reason therefor (R. 54) and was not accompanied by an opinion.

Jurisdiction

The order of the Supreme Court of Pennsylvania sought to be reviewed was entered on October 1, 1945 (R. 54). Petition for reargument was timely filed on October 8, 1945. The order refusing the petition for reargument was entered October 30, 1945 (R. 58). The jurisdiction of this court is invoked under Section 237(b) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 344(b)).

Question Presented

When a complaint for disbarment, which contains allegations of damage personal to complainant, has been ordered dismissed by the Committee on Offenses of the Allegheny County Bar Association not on the merits but on an illegal technicality; and subsequently the complainant files a petition for review of the proceedings before the Court of Common Pleas of Allegheny County, Pennsylvania, in accordance with the Rules of said court, which said petition is summarily refused; and following which refusal an appeal is taken by petitioner to the Pennsylvania Supreme Court where, on its own motion, the court ordered the appeal quashed for the reason that appellant was not an "aggrieved party" and so not entitled to appeal, has petitioner been denied due process of law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States?

Statute Involved

The Pennsylvania Act of May 22, 1722, 1 Smith's Laws 131, Sec. 9 (12 Purdon's Statutes 1091) provides:

Writs of error to aggrieved parties. If any person or persons shall find him or themselves aggrieved with the judgment of any of the said courts of general quarter sessions of the peace and jail delivery, or any other

courts of record within this province, it shall and may be lawful to and for the party or parties so aggrieved, to have his or their writ or writs of error; which shall be granted to them, of course, in such manner as other writs of error are to be granted, and made returnable to the said supreme court of this province.¹

Statement

The petitioner, on January 3, 1945, filed a complaint before the Committee on Offenses of the Allegheny County Bar Association against District Attorney Russell H. Adams (R. 5a-22a). The purpose of the complaint, of course, was to secure the Committee's recommendation to the Common Pleas Court that Adams be disbarred and his name be stricken from the roll of attorneys. During the pendency of the proceedings the respondent was District Attorney of Allegheny County, Pennsylvania, until January 4, 1946, when he became a judge of the Court of Common Pleas of Allegheny County, Pennsylvania.

The Report of the Subcommittee of the Committee on Offenses of the Court of Common Pleas of Allegheny County (R. 23a-27a) stated as the reason for the dismissal of the complaint, that the Committee had no jurisdiction because the allegations of the complaint related to Adams' conduct of the office of District Attorney for Allegheny County (R. 25a-26a). In support the Committee cited *Snyder's case*, 301 Pa. 276, 152 A. 33, which, to the contrary upholds the jurisdiction of the Court of Common Pleas to disbar a district attorney. Hence, petitioner filed a request for reconsideration on March 16, 1945 (R. 28a-46a), on the theory that the complaint had not been considered on the

¹ The Act of 1860, March 31, P. L. 427, sec. 79, repeals this section only in so far as applicable to criminal trials. See Act of 1889, May 9, P. L. 158 sec. 1: "All appellate proceedings in the supreme court heretofore taken by writ of error, appeal or certiorari, shall hereafter be taken in a proceeding to be called an appeal."

merits and in accordance with law, which request for reconsideration was ignored.

Petitioner, on May 21, 1945, presented his petition in the Court of Common Pleas of Allegheny County for a review of the proceedings, which petition was summarily refused by Rowand, P. J. (R. 46a). Judge Rowand filed an opinion (R. 46a-49a) in which he stated that he knew of no rule, practice or precedent for granting such a petition (R. 48a, 49a). Petitioner's brief filed in the Supreme Court of Pennsylvania showed that Common Pleas Court Rule 43(f), Paragraph (k),² which relates to procedure after the dismissal of a complaint, was applicable and that the petition was presented in conformity with said Rule.

The appeal from the lower court's order refusing said petition was filed in the Supreme Court of Pennsylvania June 22, 1945. On October 1, 1945, the Pennsylvania Supreme Court on its own motion ordered the appeal quashed for the reason that appellant was not an "aggrieved party" within the meaning of the Act of May 22, 1722, 1 Sm. L. 131, Sec. 9, 12 P. S. 1091, providing for appeals by any person who shall find himself "aggrieved with the judgments of * * * any court of record * * *" (R. 54).

On October 8, 1945, a Petition for Reargument (R. 55-58) was filed by petitioner averring, inter alia, that the Pennsylvania Supreme Court's Order quashing the appeal constituted a denial of due process of law as guaranteed by the

² "In the event of the dismissal of any complaint after hearing, the complainant shall have the right to petition this court for a review of the proceedings, [before the Committee on Offenses] and if such petition is presented within ten days after notification of the action of the Committee given to the complainant, the court may then direct the Committee on Offenses to file with it the entire record of its proceedings, and, if such order shall be made, the case shall be placed upon the argument list and heard by the court in banc, and such order or decree, made as shall be deemed just and proper."

Fourteenth Amendment of the Constitution of the United States, that the said order constituted a denial of petitioner's day in court (R. 57). The order of the Supreme Court of Pennsylvania refusing Petition for Reargument was entered October 30, 1945 (R. 58).

Specification of Errors to Be Urged

The Pennsylvania Supreme Court erred:

1. In quashing the appeal, thereby denying petitioner of his right to a day in court.
2. In refusing the petition for reargument, in which it was contended, inter alia, that petitioner was deprived of his constitutional right of due process of law as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

Reason for Granting the Writ

1. *The interest of the petitioner in the complaint is such a legal interest as to constitute him an aggrieved party entitled to a day in court under the Fourteenth Amendment of the Constitution of the United States.*—The petitioner's complaint (R. 5a-22a) contains averments of injury personal to himself, as follows (R. 20a-21a):

I believe that the part which Mr. Adams played in this situation was done in concert, combination and conspiracy with his First Assistant Langfitt and with the defendants, their attorneys and agents, and that it was done from an improper motive and for improper purposes. In addition to Mr. Adams' political purposes, there was the intent to damage me professionally and socially, and to injure me in the good position I had with the Army. The Military received much false and misleading information concerning me and the litigation, in furtherance of my opponents' attempt to

get rid of me. Mr. Adams necessarily shares the responsibility for all of this.

The perpetration of such conspiracy rendered the respondent liable to a suit for damages founded upon conspiracy to defame petitioner. Furthermore, the respondent, by his unprofessional conduct, was injuring the petitioner in his good name, fame and profession, thereby giving rise to an action for damages against respondent in the nature of libel. Respondent's activity created the impression with the public that petitioner was an attorney repeatedly coming into court without probable cause and unsupported by the law, whereas the opposite in fact was true. Prior to the institution of the litigation referred to in the record, petitioner was of high standing in the community and at the bar, having been twice (1941, 1942) elected an officer of the Allegheny County Bar Association. When petitioner had the opportunity of securing a decision by the Pennsylvania Supreme Court which as a matter of record might have proved that petitioner, not respondent, was right about the law involved (R. 19a-20a),³ the respondent deliberately blocked the decision by moving the court to quash the appeal from the order of the Court of Common Pleas refusing the mandamus petition (R. 15a). It was averred that respondent's move to quash the appeal was unethical and illegal (R. 15a-18a), particularly because of the nature of the question there involved, which actually is whether or not Pennsylvanians with political power and influence

³ As alleged in the complaint (R. 19a-20a): "Regarding a decision on the merits of the question involved by the Pennsylvania Supreme Court which was desired but not secured, it not only would have been very important to the people of Pennsylvania, but also it would be the most effective way and perhaps the only way of record which I could have to clear certain doubts that may exist with the public in general and the military in particular. Yet Mr. Adams in concert, combination and conspiracy with those who raised such doubts, for improper purposes and from an improper motive obstructed that decision on the merits."

may avoid indictment and trial by jury merely by procuring releases from charges against them (through habeas corpus discharges) in advance even of a presentment to the grand jury, while millions of Pennsylvanians generally who may be held for court must submit in accordance with law to indictment and trial by jury (R. 17a).

In view of the above mentioned rights of action for damages which inured to your petitioner against respondent, as set forth in the complaint filed, it is elementary that petitioner's legal rights have been infringed by the action of the Court of Common Pleas of Allegheny County, Pennsylvania, so that petitioner was an aggrieved party entitled to an appeal to the Pennsylvania Supreme Court. The only case cited by the Pennsylvania Supreme Court in support of its holding that petitioner was not an aggrieved party is *Easton Transit Company's Petition*, 270 Pa. 136, 112 A. 917 (R. 54). However, that case is not in point and does not control the instant case. The Easton Transit Company filed a petition to surrender to the State its charter right to operate a railway over a designated portion of its line. The court in that case held (p. 138) that an individual who protested the abandonment because it deprived him of that method of traveling was not a party to the contract between the Company and the State, and, in the absence of special statutory authority, had no right to appeal; and further (p. 139) that such an individual's interest is different in degree only and not in kind from that of the public generally, and so such an appellant is not an aggrieved party.

It is respectfully urged in view of the elements of damage peculiar to petitioner here, as set out in the complaint, that your petitioner had, and does have, a legal interest in the complaint such that the dismissal thereof rendered him an aggrieved party whose injury was different not only in degree but also in kind from that of the public in general.

The action of the court below has deprived your petitioner of his right to a day in court and is repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, which claim was adequately presented to the Pennsylvania Supreme Court at the earliest opportunity (R. 57) in the petition for reargument (R. 55-58). Said court failed to deal with this federal question. Not once throughout these proceedings has petitioner been able to secure a determination of his complaint on the merits. The decisions of the Committee on Offenses of the Common Pleas Court; of the Court of Common Pleas itself; and of the Pennsylvania Supreme Court have been summary.

The constitutional guaranty of due process of law assures to every person his day in court. It guarantees a course of legal procedure which has been established in our jurisprudence for the protection and enforcement of rights. An essential element is opportunity to be heard before a competent tribunal, in an orderly proceeding adapted to the nature of the case which is uniform and regular, and in accord with established rules which do not violate fundamental rights.

It is a recognized legal principle that the court has inherent power to right a wrong if thereby the civil, property or personal rights of the plaintiff in the action or the petitioner in the proceeding are affected. On the record in the instant case it is apparent that the civil, property and personal rights of your petitioner have been adversely affected so as to constitute your petitioner legally injured.

The right of all citizens to a day in court is well recognized. This right is seriously threatened when in cases of this character, lower court orders, arbitrary and otherwise contrary to law, are by the state appellate court allowed to go uncorrected on the ground that the injured party is not aggrieved. Therefore, it is respectfully urged that this

Honorable Court upon its own inspection of the record in this case find that your petitioner is an aggrieved party in this case.

Conclusion

It is submitted that this petition for a writ of certiorari should be granted.

Respectfully,

PAUL GINSBURG,
Pro se.

January 26, 1946.

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